

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Plaintiff,

v.

JEFF S. SMITH,

Defendant.

Case No. 7-17-cv-05808 (CS) (PED)

**DEFENDANT JEFF SMITH’S MOTION
TO VACATE TEMPORARY
RESTRAINING ORDER AND DENY
IBM’S REQUEST FOR A PRELIMINARY
INJUNCTION OR, IN THE
ALTERNATIVE, TO PRECLUDE IBM
FROM PRESENTING EVIDENCE AT
THE PRELIMINARY INJUNCTION
HEARING**

Defendant Jeff Smith (“Mr. Smith”) respectfully requests that this Court vacate the Temporary Restraining Order issued in the above-captioned matter and deny Plaintiff International Business Machines Corporation’s (“IBM”) Motion for a Preliminary Injunction. Alternatively, this Court should preclude IBM from presenting evidence at the preliminary injunction hearing on August 21 and 24, 2017. The grounds for this Motion are set forth in further detail in the attached Supplemental Proposed Findings of Fact and Conclusions of Law.

IBM has made knowing and continued misrepresentations to the Court and counsel concerning the supposed basis for IBM’s claims. IBM has continually represented that Mr. Smith improperly “wiped” his IBM-issued mobile devices, purportedly to conceal Mr. Smith’s efforts to misappropriate confidential information from IBM and share the information with IBM’s competitor, Amazon Web Services, Inc. (“AWS”).

However, yesterday, after repeated requests from counsel for Mr. Smith, IBM produced its own information technology (“IT”) policy that establishes that Mr. Smith’s deletion of information on his devices was perfectly proper. In other words, Mr. Smith’s returning of his

mobile devices wiped of data was precisely what he was supposed to do in accordance with IBM policy. Nonetheless, IBM represented to this Court that his having done so somehow reflected that Mr. Smith was so untrustworthy that he should not be allowed to go to work for AWS. IBM then defamed Mr. Smith when its media spokesperson contributed to various new stories indicating that Mr. Smith acted improperly in wiping his IBM-issued devices.

For these reasons and the reasons set forth in further detail in Mr. Smith's Supplemental Proposed Findings of Fact and Conclusions of Law, this Court should vacate the Temporary Restraining Order issued in the above-captioned matter and deny IBM's Motion for a Preliminary Injunction. Alternatively, this Court should preclude IBM from presenting evidence at the preliminary injunction hearing on August 21 and 24, 2017.

Dated: August 16, 2017
New York, New York

MORGAN, LEWIS & BOCKIUS, LLP

/s/ Sarah E. Bouchard

Michael L. Banks (*pro hac vice*)
Richard G. Rosenblatt (*pro hac vice*)
Sarah E. Bouchard (*pro hac vice*)
Brandon J. Brigham (*pro hac vice*)
1701 Market Street
Philadelphia, PA 19103
(215) 963-5000

SCHULTE ROTH & ZABEL LLP

Ronald E. Richman
Max Garfield
919 Third Avenue
New York, New York 10022
(212) 756-2000

Attorneys for Defendant Jeff Smith